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Subject: Dkt. 070183 - AUF's Response in Opposition to OPC's Motion to File Revised Recommended Rule
Attachments: AUF Resp in Opp to OPC Revised Rule 01 16 2007.pdf

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The docket number and title of docket:

Docket No. 070183-WS
Proposed adoption of Rule 25-30.4325, F.A.C., Water Treatment Plant Used and Useful Calculations

The name of the parties on whose behalf the document is filed:

Aqua Utilities Florida, Inc.

The total number of pages in the attached document: 5

A brief but complete description of each attached document:

AUF's Response in Opposition to OPC's Motion to File Revised Recommended Rule

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DOCUMENT NUMBER-DATE

00430 JAN 16 8

FPSC-COMMISSION CLERK

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Proposed adoption of Rule 25-30.4325, F.A.C., Water Treatment Plant Used and Useful Calculations. DOCKET NO. 070183-WS
FILED: January 16, 2008

**AQUA UTILITIES FLORIDA, INC.'S
RESPONSE IN OPPOSITION TO OPC'S
MOTION TO FILE REVISED RECOMMENDED RULE**

Aqua Utilities Florida, Inc. (hereinafter "AUF"), pursuant to Rule 28-106.204(1), Florida Administrative Code, hereby files its Response in Opposition to the Office of Public Counsel's ("OPC") Motion to File Revised Recommended Rule 25-30.4325, F.A.C. (the "Motion"). In support of this Motion, AUF states as follows:

1. On May 31, 2007, the Commission issued Order No. PSC-07-0469-NOR-WS, in which it set forth its intent to adopt new Rule 25-30.4325, Florida Administrative Code, relating to used and useful calculations for water treatment plants. On June 9, 2007, OPC filed a Petition for Hearing pursuant to § 120.54(3)(c)2., Florida Statutes, which was granted by Order No. PSC-07-0741-PCO-WS, issued on September 17, 2007.

2. Rule 28-106.211, Florida Administrative Code, states as follows:

The presiding officer before whom a case is pending may issue any orders necessary to effectuate discovery, to prevent delay, and to promote the just, speedy, and inexpensive determination of all aspects of the case....

3. Pursuant to this authority, on September 25, 2007, the Prehearing Officer issued Order No. PSC-07-0777-PCO-WS, *Order Establishing Procedure*, which directed the parties to file all testimony and exhibits by 5:00 p.m. on the date due, according to the following schedule:

DOCUMENT NUMBER-DATE

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FPSC-COMMISSION CLERK

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| (1) OPC's testimony and exhibits | November 5, 2007 |
| (2) Intervenors' testimony and exhibits | December 3, 2007 |
| (3) Staff's testimony and exhibits, if any | December 17, 2007 |
| (4) Prehearing Statements | December 17, 2007 |
| (5) OPC's rebuttal testimony and exhibits | December 31, 2007 |
| (6) Prehearing Conference | January 7, 2007 |
| (7) Discovery deadline | January 15, 2008 |
| (8) Hearing | January 22-23, 2008 |
| (9) Briefs | February 19, 2008 |

The order clearly states that testimony and exhibits not timely filed may be barred. *Order Establishing Procedure*, at 1-2.

4. Pursuant to the *Order Establishing Procedure*, OPC's direct testimony and exhibits were filed on November 5, 2007. All other prefiled testimony and exhibits filed by OPC, the Intervenors and Staff have also been filed in this proceeding. But nonetheless, by Motion dated January 9, 2008, OPC now seeks to supplement and revise its previously-filed prefiled direct testimony and exhibits by filing Revised Exhibit ATW-2 to the Direct Testimony of its witness, Andrew T. Woodcock. OPC's Motion should be denied because it is tardy, procedurally inappropriate, and would irrevocably prejudice Aqua and other participants.

5. This Commission has held that "[p]refiled testimony affords parties, the Commission Staff, and the Commission the opportunity to review and prepare for the hearing." Order No. PSC-95-0208-PCO-WS, *Order Revising Order Establishing Procedure, Granting Motion for Leave to Amend Testimony, and Requiring Prefiled Testimony*.¹ Further, noting that

¹ *In Re: Application for Amendment of certificates in Lake County by JJ'S MOBILE HOMES, INC.*, Order No. PSC-95-0208-PCO-WS issued February 15, 1995. In that case, the Prehearing Officer granted a motion for leave to amend testimony several months in advance of a rate case

the requirement to prefile testimony “is a long-standing practice for formal, evidentiary hearings before the Commission,” the Commission has explained that the practice serves to “enhance the parties’ ability to prepare for hearings that often involve very complex technical and policy matters and promote the ability of the parties and the Commission to focus their efforts at hearing.” Order No. PSC-02-1282-PCO-EI, *Order Granting Motion to Exclude Witnesses*.²

6. OPC’s belated filing – less than two weeks prior to hearing – deprives AUF of its right to respond to OPC’s revised proposals through prefiled testimony and exhibits. Further, OPC’s “eleventh hour” revised rule proposal has been submitted so late in the process as to deprive AUF of any meaningful opportunity to conduct discovery³ and prepare for hearing based on the uncertainty of potentially having to address a new set of OPC proposals not reflected in OPC’s prefiled testimony and exhibits. Having sought and been granted a formal evidentiary hearing in this matter, OPC should not be permitted to present a last minute set of revised rule proposals in violation of the requirements of the *Order Establishing Procedure*.

7. OPC’s Revised Exhibit is not “just an updated, cleaned up version of [OPC’s] final recommendation as a result of . . . little changes . . .” as suggested at the Prehearing Conference on January 7, 2008.⁴ Rather, OPC proposes sweeping revisions to its originally-proposed rule. These revisions are not supported by Mr. Woodcock’s Direct Testimony and

hearing to update testimony filed more than six months previous. The order also permitted other parties to file responsive amended testimony.

² September 19, 2002, Docket No. 020262-EI, Petition to determine need for an electrical power plant in Martin County by Florida Power & Light Company.

³ The discovery cutoff date under the *Order Establishing Procedure* is January 15, 2008.

⁴ See, Transcript of Prehearing Conference, PSC Document No. 00168-08, pgs. 16-17.

accordingly, no party was given the opportunity to provide rebuttal thereto. OPC's proposal is highly technical in nature, and AUF would be severely prejudiced by its belated introduction.

WHEREFORE, AUF respectfully requests that the Commission deny OPC's Motion to File Revised Recommended Rule 25-30.4325, Florida Administrative Code.

Respectfully submitted,

/s / Kenneth A. Hoffman

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing Response in Opposition to OPC's Motion to File Revised Recommended Rule was furnished by E-mail and U. S. Mail this 16th of January, 2008 to:

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